

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JERRY WILLIAM MCCLUNEY,
 vs.
 JEFFREY BEARD, Secretary
 Respondent.

CASE NO. 14CV1470 BEN (DHB)
**ORDER ADOPTING REPORT AND
 RECOMMENDATION AND
 DENYING MOTION FOR STAY
 AND ABEYANCE**
 [Docket Nos. 16, 22]

Petitioner Jerry William McCluney, a state prisoner proceeding *pro se*, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 asserting a single claim. (Docket No. 1.) On September 19, 2014, Petitioner filed a Motion for Stay and Abeyance. (Docket No. 16.) On October 3, 2014, Respondent filed an Opposition to the Motion and on October 30, 2014 Petitioner filed a Reply. (Docket Nos. 18, 20.) On January 23, 2015, Magistrate Judge David H. Bartick issued a thoughtful and thorough Report and Recommendation recommending that the Motion for Stay and Abeyance be denied. (Docket No. 22). Objections to the Report and Recommendation were due by February 13, 2015. (*Id.*) No objections have been filed. For the reasons that follow, the Report and Recommendation is **ADOPTED**.

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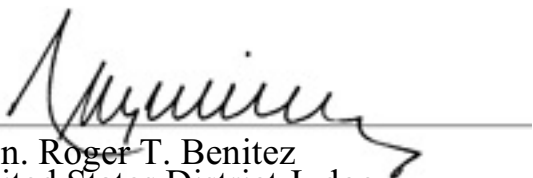
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1 A district judge “may accept, reject, or modify the recommended disposition” of
2 a magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.
3 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and
4 recommendation] that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).
5 However, “[t]he statute makes it clear that the district judge must review the magistrate
6 judge’s findings and recommendations de novo *if objection is made*, but not
7 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
8 banc); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither
9 the Constitution nor the statute requires a district judge to review, de novo, findings
10 and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328
11 F.3d at 1121.

12 In the absence of any objections, the Court fully **ADOPTS** Judge Bartick’s
13 Report and Recommendation. The Motion for Stay and Abeyance is **DENIED**.

14 **IT IS SO ORDERED.**

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16 DATED: March 16, 2015

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19 Hon. Roger T. Benitez
20 United States District Judge
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